REMARKS/ARGUMENTS

Claims 1-15 are pending in the application.

Applicant respectfully traverses the restriction requirement as inappropriate for the reasons set forth below. In addition, Applicant asserts that there would be no undue burden in examining these alleged six Species (parsed out by FIGS.) that the claims allegedly are directed to.

The fees for examination of these claims had been remitted in the filing of the national application under 35 U.S.C. §371. The Applicant merely requests that he receive examination that he has paid for.

According to the Examiner, "*This application contains claims directed to the following patentably distinct species of the claimed invention.*"

Applicant has reviewed the figures and directs Examiner's attention to the Summary of the Figures paragraphs [0067 through [0080] on page 7 of the US Published Application US 2008/0285333 A1. The alleged FIG 3. species of the electric device is not separate, rather it is *"the electric device 100 shown schematically in FIG. 3 comprising a layer 107 of phase material. . .[0082]. . . The electric device 100 further comprises a switching signal generator 400. . . [0083]."* Applicant asserts that FIG. 3 is a top-level view of Applicant's claimed invention and how to implement said invention. Review of FIG. 5, FIG. 7, FIG. 9, FIG. 11 (FIG. 12), and FIG. 14A depict an example embodiment of Applicant's invention at various stages of manufacturing. For instance, *"[0070] Fig 5 is a top view. . .at a first stage of the manufacturing," "[0072] Fig. 7 is a top view. . .a second stage of the manufacturing. . .,"[0074] Fig. 9 it a top view. . .at a third stage of the manufacturing. . .," [0076] Figs. 11 and 12 are top views. . .at fifth stage, taken along the line X—X of Fig. 9."* These figures could not possibly represent discrete features of Applicant's claimed invention; they are the various stages of manufacture in the building of Applicant's invention. The invention does not exist until all the stages of manufacturing process are completed. Thus, the Office Action's assertion of distinct Species I through V is not supported.

From Applicant's perspective, the proposed Species I through V, map to claims 1-9, and claims 11-15. Claim 1 being the sole independent claim, and the other claims presenting additional features. With traverse, Applicant elects these claims.

With respect to proposed Species VI, Applicant asserts that this embodiment is another feature of the claimed invention (Claim 10).

For some guidance, Applicant has reviewed the "International Preliminary Report on Patentability (dated 20 February2007) of Application No. PCT/IB2005/050923," of published application WO 2005/093839) hereinafter, "IPRP," that corresponds to this national application. The IPRP noted no issues with a "Lack of Unity of Invention" with respect to the pending claims (claims 1-15); the IPRP concurs with the "observance of this requirement is checked by the International Searching Authority and may be relevant to the national (or regional) phase. (MPEP §1850), Paragraph I." The review made by WIPO regarding Applicant's invention showed no need to parse out claims 1-15 and found no undue burden in performing a search on these claims.

For convenience, a copy of this IPRP is enclosed, and follows the Remarks/Arguments as part of the Information Disclosure Statement submitted with these papers.

In a regular U.S. national application, the framework of statutes and rules require the USPTO Examiner to make an Agency determination that independent or distinct inventions are claimed, and to support such determination by appropriate argument, reasoning, and facts. In the instant case, the determination under 35 U.S.C. §121 is inappropriate.

In a U.S. national phase PCT entry (35 U.S.C. §371) the framework of statutes and rules require the USPTO Examiner to make an Agency determination that there is lack of Unity of Invention , according to the PCT Articles, Rules (13), and Administrative Instructions including Annex B. (U.S. Court Decision on point: *Caterpillar Tractor Co. v . Commissioner of Patents and Trademarks*, 650 F. Supp. 218, 231 USPQ 590 (E.D. Va. 1986))

As noted earlier, this application was filed under 35 U.S.C. §371, therefore Applicant requests that the Unity of Invention determination made during the pendency of the PCT application be respected and the claims of the invention be examined as whole.

Please charge any fees other than the issue fee and credit any overpayments to Deposit Account **50-4019**.

Respectfully submitted,

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